

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES CURTIS KERN,

Plaintiff,

v.

TAMERA LYNN SOLOMAN,

Defendant.

No. 2:24-CV-1040-WBS-DMC-P

FINDINGS AND RECOMMENDATIONS

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court is Plaintiff's original complaint, ECF No. 1.

On August 28, 2024, the Court issued an order addressing the sufficiency of Plaintiff's complaint. See ECF No. 15. In that order, the Court determined that Plaintiff's complaint appears to state a cognizable claim against Defendant Solomon as alleged in Plaintiff's Claim I. See id. The Court found that Plaintiff's remaining Claim II and Claim II appear to be barred. See id. Plaintiff was provided an opportunity to file a first amended complaint and cautioned that, if no amended complaint was filed in the time permitted therefor, the action would proceed on Claim I and the Court would recommend dismissal of Claim II and Claim III. See id. To date, the time permitted for filing of a first amended complaint has passed and no first amended complaint has been filed. By separate order, the Court will direct Plaintiff to submit the necessary documents for service of the complaint on Defendant Solomon by the United States

1 Marshal. The Court herein recommends dismissal of Claim II and Claim III for the reasons
2 outlined in the August 28, 2024, order.

3 Based on the foregoing, the undersigned recommends as follows:

4 1. This action proceed on Plaintiff's original complaint, ECF No. 1, as to his
5 Claim I against Defendant Solomon.

6 2. Claim II and Claim III be dismissed with prejudice for failure to state a
7 claim upon which relief can be granted.

8 These findings and recommendations are submitted to the United States District
9 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
10 after being served with these findings and recommendations, any party may file written objections
11 with the Court. Responses to objections shall be filed within 14 days after service of objections.
12 Failure to file objections within the specified time may waive the right to appeal. See Martinez v.
13 Ylst, 951 F.2d 1153 (9th Cir. 1991).

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15 Dated: November 18, 2024



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE

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